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In re Application of:
Kuki et al.
Application No. 09/273,833

Filed: March 22, 1999
For: MEDIA NOISE POST-PROCESSOR WITH
VARYING THRESHOLD

MAIL

Paper No. 15

OCT 10 2003

: DIRECTOR OFFICE
: TECHNOLOGY CENTER 2600

: DECISION ON PETITION TO
: WITHDRAW HOLDING OF
: ABANDONMENT

This is a decision on the copy of the CPA paperwork filed 8/15/03, which is being treated as a petition to withdraw the holding of abandonment of the above identified application.

In the above identified application, Final Rejection was mailed to the applicant on October 17, 2002. An After-Final response was filed by the applicant on January 14, 2003. An Advisory Action was mailed to the applicant on January 28, 2003, informing the applicant that the response was not persuasive. In response, applicant filed a one (1) month extension of time and a Notice of Appeal. The above identified application became abandoned due to Applicant's failure to timely file an Appeal Brief by Monday May 19, 2003. No Notice of Abandonment was mailed.

Petitioner asserts that a proper response in the form of a Continued Prosecution Application (CPA) was timely filed on May 20, 2003. In support of the petition, petitioner submits a copy of Express mailing label EV053665577US showing a "date in" date of May 20, 2003; a copy of a Transmittal Request for Continued Prosecution Application (CPA) with the same Express Mailing Label number thereon. A review of the U.S. Patent and Trademark Office records reveal that the extension of time filing fee was not applied to the instant application. A fee of \$750 was applied toward Continuing Prosecution Application on May 20, 2003.

The filing of papers and fees by Express mail is covered by 37 C.F.R § 1.10. 37 C.F.R 1.10 (e) states:

"Any person mailing correspondence addressed as set out in § 1.1 (a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence file in the office on the USPS deposit date, provided that:

(1) the copy of the CPA paper work is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) the number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) the copy of the CPA paperwork includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official date entered by the USPS, a showing pursuant to paragraph (d) (3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post office to Address" service prior to the last scheduled pickup for the day; and,

(4) the petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS."

Although the CPA request was not timely filed, Practitioner included a general authorization to charge their deposit account for any required fees in the paper filed February 17, 2003. Accordingly, the request for withholding abandonment is deemed to meet the requirements.

Therefore, the holding of the Abandonment is withdrawn.

The petition is **GRANTED**.

The Application file is being forwarded to the technical support staff for processing of the CPA request, and for charging the necessary fees for a second month extension of time in the amount of \$300, in order for the CPA request to be accepted as timely filed. Thereafter, the application will be forwarded to the examiner for further examination.


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